



Entered on Docket
June 11, 2008

Hon. Linda B. Riegler
United States Bankruptcy Judge

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re

USA COMMERCIAL MORTGAGE COMPANY,

Debtor.

In re

USA CAPITAL REALTY ADVISORS, LLC,

Debtor.

In re

USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,

Debtor.

In re

USA CAPITAL FIRST TRUST DEED FUND, LLC,

Debtor.

In re

USA SECURITIES, LLC,

Debtor.

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726 LBR
Case No. BK-S-06-10727 LBR
Case No. BK-S-06-10728 LBR
Case No. BK-S-06-10729 LBR

Chapter 11

Jointly Administered Under
Case No. BK-S-06-10725 LBR

ORDER GRANTING
MOTION FOR ORDER IN SUPPORT OF
PLAN CONFIRMATION ORDER

DATE: JUNE 9, 2008
TIME: 9:30 A.M.

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Affects:

- ☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Securities, LLC
☐ USA Capital Realty Advisors, LLC
☒ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC

The Motion for Entry of an Order in Support of Plan Confirmation Order filed by Platinum Properties 1, Inc. ("Motion") came on for hearing at the above date and time, the Honorable Linda B. Riegle, United States Bankruptcy Judge, presiding. Platinum was represented by James D. Greene, Esq. of Brownstein Hyatt Farber Schreck, LLP. No other appearances were noted on the record in connection with the Motion. The Court has considered the Motion and the Exhibits thereto, other relevant pleadings, and the arguments of counsel at the hearing. The Court has determined that notice of the Motion was properly given to all appropriate parties and that, for good cause appearing,

IT IS HEREBY ORDERED that the Motion be, and it hereby is, GRANTED; and in support thereof, the Court makes the following findings of fact and conclusions of law:

A. USA Commercial Mortgage Company ("USACM"), USA Securities, LLC, USA Capital Realty Advisors, LLC, USA Capital Diversified Trust Deed Fund, LLC and USA Capital First Trust Deed Fund, LLC ("FTDF," and collectively the "Debtors"), filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code on April 13, 2006.

B. By Order entered on or about June 9, 2006, the Court approved the joint administration of the Debtors' bankruptcy cases.

C. On January 8, 2007, the Court entered the "[PROPOSED] ORDER CONFIRMING THE 'DEBTORS' THIRD AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION,' AS MODIFIED HEREIN" (hereinafter the "Confirmation Order"), thereby confirming the Debtors' joint plan of reorganization, as modified by the Confirmation Order (hereinafter the "Plan"), and approving certain documents filed in conjunction with the Plan and transactions contemplate therein.

D. The Confirmation Order approved, *inter alia*, the Asset Purchase Agreement, dated December 8, 2006 (hereinafter the "APA") by and between USA Commercial Mortgage

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Company and USA Capital First Trust Deed Fund, LLC, as “Sellers,” and USA Capital Diversified Trust Deed Fund, LLC, USA Capital Realty Advisors, LLC and USA Securities, LLC as “Acknowledging Parties,” and Compass Partners, LLC (hereinafter “Compass”) as “Purchaser.”

E. The Plan and APA set forth the terms and conditions of the Asset Sale Transaction, as defined in the Plan, under which Compass would acquire certain assets of the Debtors, defined as Assets in the APA.

F. The Asset Sale Transaction to Compass closed on or about February 16, 2007 (the “Closing”).

G. As set forth in Paragraph “14.” of the Confirmation Order, the Assets were to be conveyed to Compass free and clear of all liens, claims, interests, obligations and encumbrances whatsoever, except as expressly permitted or otherwise specifically provided for in the APA or Confirmation Order.

H. The Asset Purchase Agreement defined the term Assets to include FTDF Assets listed on Schedule 1 to the APA and USACM’s interests in Servicing Agreements and Personal Property as set forth in Schedule 2 to the APA.

I. Schedule 2 to the APA includes an Asset described as follows:

<u>Loan Name</u>	<u>Origination Date</u>	<u>7/31/06 Loan Outstanding</u>	<u>FTDF Ownership</u>	<u>USMC Ownership</u>
HFA-Windham	11/15/2004	5,550,000	0.00%	0.00%

J. Schedule 1 to the APA contains no reference to any loan identified as “HFA-Windham.”

K. In accordance with the Confirmation Order, and upon occurrence of the Closing of the Asset Sale Transaction, the Debtors conveyed to Compass all rights and claims with respect to the transfers made by USACM to HFAH Asylum, LLC and/or Homes for America Holdings, Inc., and referenced as the “HFA-Windham” loan in Schedule 2 to the APA (hereinafter the “HFA-Windham Loan”), including, without limitation, the right to collect and receive repayment.

L. Each party-in-interest, including, without limitation, the Debtors, the Debtors’

1 successors in interest, and the Direct Lenders, as that term is defined in the Plan, with respect to
2 the HFA-Windham Loan, including, without limitation, the Direct Lenders set forth in **Exhibit A**
3 attached hereto, is forever barred from challenging the right of Compass, or its assignee, to
4 collect and receive repayment of the HFA-Windham Loan, including, without limitation, the
5 assertion of any Surviving Section 3 Right, as that term is defined in Paragraph "14" of the
6 Confirmation Order."

7 **Submitted By:**

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9 BROWNSTEIN HYATT FARBER SCHRECK, P.C.

10 By: /s/ James D. Greene
11 James D. Greene, Esq.
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14 Attorneys for Platinum Properties 1, Inc.

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